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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date:	**07/02/14**	Bill No:	**Assembly Bill 1839**
Tax Program:	**Sales and Use**	Author:	**Gatto, et al.**
Sponsor:	**Author**	Code Sections:	**RTC 6902.5**
Related Bill:		Effective Date:	**Upon enactment**

BILL SUMMARY

This bill extends, expands, and makes technical changes to the qualified motion picture tax credit allocated by the California Film Commission (CFC) and administered by the Franchise Tax Board (FTB). It makes conforming changes to the Sales and Use Tax Law that allows a credit against qualified state sales and use taxes, as specified.

Summary of Amendments

The amendments since the previous analysis require (1) the CFC to provide specified information to California cities and counties, and (2) the Legislative Analyst's Office (LAO) to provide to the Legislature a report evaluating the economic effects and administration of the tax credit.

ANALYSIS

CURRENT LAW

Existing law[1] allows a credit to a "qualified taxpayer" against the personal income tax or the corporation franchise tax in an amount equal to:

- 20% of the "qualified expenditures" attributable to a California-produced qualified motion picture, or
- 25% of the qualified expenditures attributable to a television series production that relocated to California, or an independent film, as defined.

The law requires the CFC to determine and designate who is a qualified taxpayer and to establish criteria for allocating the credits.

A "qualified expenditure" means an amount paid or incurred to purchase or lease tangible personal property used within this state in a qualified motion picture production and payments, including "qualified wages," for services performed within this state in a qualified motion picture production.

"Qualified wages" means all of the following:

- Any wages required to be reported[2] that were paid or incurred by any taxpayer involved in the qualified motion picture production.
- The portion of any fringe benefits paid or incurred by any taxpayer involved in a qualified motion picture production.
- Any payments made to a qualified entity for services performed in this state by a qualified individual who performs services during the production period related to the qualified motion picture production.

[1] Revenue and Taxation Code (RTC) Sections 17053.85 and 23685.
[2] Pursuant to Unemployment Insurance Code Section 13050.

- Remuneration paid to an independent contractor who is a qualified individual for services performed within this state by that qualified individual.

"Qualified motion picture," means, among other things and subject to certain conditions, a feature with a minimum $1 million budget and a maximum $75 million budget. The law excludes productions, such as commercials, music videos, news programs, talk shows, game shows, awards shows, and private noncommercial productions (e.g., weddings or graduations).

Existing law[3] allows qualified taxpayers, or affiliates to whom the qualified taxpayers assigned credit amounts, to either claim a refund of qualified sales and use tax paid, or a credit against qualified sales or use taxes imposed on the qualified taxpayer or affiliate that is equal to the credit amount that would otherwise be allowed under these credit provisions. This credit or refund is in lieu of claiming the franchise or income tax credit.

"Qualified sales and use taxes" means any state sales and use taxes imposed by Part 1 (commencing with Section 6001) of the Sales and Use Tax Law, but excludes taxes imposed by Section 6051.2 and 6201.2 (Local Revenue Fund), 6051.5 and 6201.5 (Fiscal Recovery Fund), Part 1.5 (Bradley-Burns Uniform Local Sales and Use Tax Law), Part 1.6 (Transactions and Use Tax Law), or Section 35 of Article XIII of the California Constitution (Local Public Safety Fund).

PROPOSED LAW

This bill extends for five years the requirement that the CFC annually allocate tax credits to qualified taxpayers, as specified, continuing through the 2021-22 fiscal year. In addition, this bill, among other things, does the following:

- Removes the $75 million cap on the budget for a qualified motion picture and instead places a cap on the credit amounts a qualified motion picture is eligible to receive, as specified.
- For television, extends the credit to include all television series, as defined, regardless of broadcast media (currently, the credit applies only to television series broadcast through cable-TV).
- Provides a new incentive for productions located outside of the Los Angeles zone, as specified.
- Provides that the credit shall be 20% of the qualified expenditures attributable to a California-produced qualified motion picture, including, but not limited to:

  a) A feature, up to $100 million, or;

  b) A television series in its second or subsequent years of receiving a tax credit allocation under these provisions.
- Defines a "qualified motion picture" to mean a motion picture that is produced for general public distribution, regardless of medium, that is one of the following:

  a) A feature with a $1 million minimum production budget.

  b) A movie of the week or miniseries with a minimum $500,000 production budget.

3 RTC Section 6902.5.

c) A new California-produced one-hour television series of episodes with running time longer than 40 minutes each, excluding commercials, with a $1 million per episode minimum production budget.

d) An independent film.

e) A television series that relocated to California, as defined.

f) A pilot for a new California-produced television series that is longer than 40 minutes of running time, excluding commercials, with a $1 million minimum production budget.

g) Requires the CFC to increase the applicable percentage by 5%, not to exceed 25%, if the qualified motion picture incurred or paid the qualified expenditures relating to original photography outside the Los Angeles zone.

- Restructures and increases the allocation from 20% to 25% the qualified expenditures relating to music scoring and music editing attributable to the qualified California motion picture production.
- Requires the CFC to set aside no more than $20 million of tax credits each fiscal year for independent films, as specified.
- Requires the CFC to set aside up to $30 million of tax credits each fiscal year for a television series that relocates to California, as specified.
- By July 1, 2019, requires the LAO to provide to the Legislature a report evaluating the economic effects and administration of the tax credit and authorizes the LAO to request and receive specified information from the BOE, the FTB, and the CFC.

As a tax levy, the bill becomes effective immediately upon enactment.

BACKGROUND

In 2009, Governor Schwarzenegger signed into law[4] the California Film and Television Tax Credit Program as part of the 2009 Budget plan to promote film production and create and retain jobs in California. To date, the Board of Equalization (BOE) has received and approved several claims for refund, but from only one qualified taxpayer.

COMMENTS

1. **Sponsor and purpose.** The author is sponsoring this bill to create a more robust and better targeted incentive program that will help keep more feature and television production in the state, and guarantee thousands of well-paid, highly-skilled jobs in our local economies.

2. **The July 2, 2014 amendments** require (1) the CFC to provide specified information to California cities and counties, and (2) the Legislative Analyst's Office (LAO) to provide to the Legislature a report evaluating the economic effects and administration of the tax credit. These amendments also authorize the LAO to request and receive specified information from the BOE, the FTB, and the CFC pertaining to the credit. **The June 17, 2014 amendments** were not applicable to the BOE. Among other things, the bill changed CFC allocation provisions related to television series that relocate to California.

[4] SBx3 15, Ch. 17, Stats. 2009 and ABx3 15, Ch. 10, Stats. 2009.

3. **Bill does not significantly impact the BOE's administrative functions.** The BOE relies on FTB data to review and approve appropriate refund amounts. To date, the BOE has only received claims for refund from one qualified taxpayer.

COST ESTIMATE

BOE will incur absorbable administrative costs related to notifying affected qualified taxpayers, and revising publications and web-based information.

REVENUE ESTIMATE

According to the Assembly Appropriations Committee staff analysis, this bill will result in unspecified but substantial General Fund revenue decreases, likely in the hundreds of millions of dollars annually, over the program's duration.

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